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Law School Training in Research and Exposition

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LAW SCHOOL DEVELOPMENTS

Once a year, in the fall, this department will carry figures on law school registration. In addition it will provide a medium for the description of experiments in curriculum, teaching method, and administration. Like "comments," the typical law school development note will be characterized by brevity and informality; unlike them, it will be descriptive rather than argumentative and will deal primarily with devices which have been tested in actual operation.

LAW SCHOOL TRAINING IN RESEARCH AND EXPOSITION:

THE UNIVERSITY OF CHICAGO PROGRAM

(To be read to the tune of "I'm Called Little Buttercup")

I'm not on the law review,
I'm just a fellow who
Never could make the grade.
I'm jealous of fellows who
Sit on the law review—
Their reputation is made.

I study the cases,
I know all the places—
The isle of Tobago can't bind;
But teachers berate me,
I think that they hate me—
Else why am I left far behind?

Oh, I am a broken man,
Doing the best I can;
I ask you, what is there to do?
No office will want me,
My past it will haunt me:
I'm not on the law review.

J. W. SANDWEISS ('50)

I

However intense and widespread the debate may be on many issues of contemporary legal education, there is one matter today on which there is perhaps unanimous agreement. That is that, whatever else a lawyer is to be

and is to do, he must be a man trained in the use of language, in the clear presentation of complex and technical materials; he must, that is, be an expert in exposition. And the law schools for the most part have signally failed to afford the law student opportunity for sustained exposition, other than the writing of examinations. Another facet of the same shortcoming is the failure of law schools to afford sufficient opportunity for individual work. Law schools are perhaps unique at the upper levels of university education in the degree to which they rely on formal group (class) work as the exclusive educational procedure; and this is especially surprising since whatever else the lawyer is, he is traditionally a self-reliant man who does much of his work alone. It is a way of stating both these deficiencies to recall once again the tritest of observations about education in the law schools—that the best education is found in the law reviews, which are student-run, rather than in the rest of the school, which is faculty-run.

It is the purpose of this report to describe a program with which the University of Chicago Law School has been experimenting for the past ten years. It is a program in individual research and exposition for all first-year students. The program is still in an experimental stage, and it by no means affords a complete answer to the problem of individual student research and exposition in law. It is believed, however, that the experience with the work has now been sufficient to warrant reporting on it and that a report may furnish a vehicle not only for discussing the immediate issue but also for touching on some of the larger but associated issues of legal education.

II

Perhaps the most important fact about the program as presently operated is that it has its own staff.[1] In the early years of the program various possibilities were tried, such as the writing of papers as an adjunct to a given course, enlisting the entire faculty and assigning a small group of students to each member, and using graduate students on a part-time basis. Owing largely to the interest of the Carnegie Corporation in educational experiment and to its generous support, it became possible to explore the practicability of operating the program with a staff whose primary responsibilities were to the program.

The present staff consists of one regular faculty member and four teaching fellows.[2] Fellowship appointments[3] are for one-year periods, and fellows are selected on the basis of applications from law graduates of high scholastic achievement. The qualifications required of a fellow are simply

[1] It is on this point that we would dissent from several recent proposals to enlarge or adapt or duplicate the law review in some fashion as a way of meeting the problem. See Marsh, *The Law Review and The Law School: Some Reflections about Legal Education*, 42 ILL.L.REV. 424 (1947); Westwood, *The Law Review Should Become the Law School*, 31 VA.L.REV. 913 (1945).

The law review is an extraordinary institution, and from the point of view of the school a remarkably inexpensive one even when partially subsidized. But I seriously question whether the trick or the magic by which the students are induced to do so much work so well can be pushed farther. Either the review proper becomes unmanageable or a "poor man's law review" is set up.

[2] The fellowships are named after Dean Emeritus Harry A. Bigelow.

[3] The fellowships at the present time carry a stipend of $3,000 for the academic year of nine months. Fellows are non-voting members of the faculty.

that he be a very good lawyer with an interest in education. The program has been singularly fortunate thus far in its recruitment.[4]

Since the primary responsibilities of the fellows are to the research program, the fellowships are not regarded as grants for part-time graduate study. It is, however, intended that the fellows shall have sufficient time to do writing on their own during the year, and to attend courses of interest in the Law School or elsewhere in the University. It is also intended that fellows shall have, whenever practicable, an opportunity during the year to conduct a joint seminar with some member of the faculty in a field of special interest to them. One major objective of the program is teacher training.

The program is designed to carry 100 to 125 students through a series of projects extending over their first year of law school. It has been our experience that each fellow can best handle approximately twenty-five students. If the number is larger the work becomes too burdensome and time-consuming. If the number is much smaller it ceases to be a fair sample of the student body. In general, it is desirable but not indispensable that the staff member retain the same students throughout the year.

The work is presently run as a single, uniform program. The members of the staff work out the assignments together and reach basic agreement as to the objectives of a particular assignment. There are frequent staff conferences throughout the year as the work moves from one stage to another, and, of course, there is a great deal of informal staff contact. As far as possible the program is coordinated so that all students are doing approximately the same work at the same time and receiving approximately the same supervision.

This year the program called for roughly 300 hours of student time and the writing of twelve assignments totaling approximately 25,000 words. As a segment of the curriculum, it carried an eight-hour credit out of the total for the year of forty hours, and was about the equivalent of the basic first-year course in Torts or Contracts.

[4] The Bigelow Fellows for the year 1947–1948 are: Ann Leonard, J.D. 1946, University of Chicago; Howard Squadron, LL.B. 1947, Columbia University; Morris Weisberg, LL.B. 1947, University of Pennsylvania; John Wilkins, LL.B. 1947, Harvard University.

In prior years the following have been associated with the program: Maurice E. Bathurst, LL.B. 1937, University of London, now with United Kingdom delegation to the United Nations; Edgar L. Bethell, LL.B. 1941, University of Arkansas, now on the law faculty at the University of Arkansas; Ritchie G. Davis, J.D. 1939, University of Chicago, now on the law faculty at Indiana University; David E. Feller, LL.B. 1941, Harvard University; Edward L. Friedman, LL.B. 1940, Columbia University, now in practice with Root, Ballentine, Harlan, Busby & Palmer in New York; Leonard P. Goldberg, J.D. 1945, University of Chicago, now on the faculty at the University of Washington; Maxwell S. Isenbergh, LL.M. 1939, Harvard University, now with the Department of Justice; Daniel C. Smith, J.D. 1940, University of Chicago, now in practice with Hopkins, Sutters, Halls, de Wolfe and Owen in Chicago; David L. Sayre, J.D. 1942, University of Iowa, now in practice in Cherokee, Iowa; Emerson G. Spies, B.C.L. 1939, Oxford, now on the law faculty at the University of Virginia; Jacobus tenBroek, J.S.D. 1940, University of California, now on the faculty at the University of California, Berkeley.

The specific assignments will be described briefly below. It is useful to note as a preliminary that they are designed to introduce variety into the writing, and that this year they included five legal memoranda, a précis, a radical condensation of a prior memorandum, two editorials, a preliminary question list, a preliminary definition of a field of research, and a book review.[5] The memorandum [6] remains the basic staple of the writing program, however; the others are added for fun and because popularization is itself an important skill for the modern law man.[7]

This year the sequence of assignments has been keyed to a single plan. The first assignment, the précis, was designed to bridge the gap between non-legal and legal writing by having the student analyze and comment on a piece of non-legal exposition. The second assignment, the precedent analysis, was designed to introduce him to the handling of case materials and to the consecutive exposition of a series of cases, without, however, requiring that he first find the cases. The third assignment, the case problem, was designed to supplement the exposition of case materials with the additional function of finding the materials on which to comment. It also introduced the use of a set of facts as a standard of relevance for research and analysis. The fourth assignment, the topic problem, was designed to supplement research on traditional legal materials with some research in the associated social sciences. It also introduced a new standard of relevance: the problem or field, rather than the particular case. Finally, the fifth assignment, the book review, was designed to afford an opportunity for a glance backward over the initial year of law study.

Thus the differences between assignments are functional. It appears to be important that the student recognize that he is progressing from one kind of work to another during the year and not doing the same kind of thing in mild disguise over and over again.

The exact pattern of assignment used this year will be described below simply by way of illustration. A considerable attraction of a program of this nature lies in the degree to which it permits exploration of varied teach-

[5] In other years such additional forms as skeleton memoranda, casebook outlines, briefs, case notes, and judicial opinions have been tried. As will be noted later, it is believed that this is the wrong time for brief writing. The case-note form is too terse for freshman work and carries economy to an extreme. The skeleton memorandum was distinctly unsuccessful. Judicial opinions have a certain element of novelty, but probably add too many complicating factors if the literary genre is really to be followed. The casebook outline, in which the student compiles an outline of materials for a casebook section on his problem, is a special pet of mine which we usually do not have quite enough time to try. It would, I think, do something to unlock the mystery of the casebook for the student who does not understand how man-made a casebook is.

[6] The memoranda are in the style of law-review work, rather than the perhaps more utilitarian forms to be found in most law offices. This is in part because astute use of footnotes as an emphasis-giving device is itself a useful thing to learn, and in part because the law-office form of memorandum might well bear some editorial changes.

[7] The allotment of time may indicate the relative importance of each assignment: précis, ten days; precedent analysis, four weeks; case problem, nine weeks; topic problem, thirteen weeks. The book review was a concurrent assignment throughout the year.

ing material. Clearly, both content and pattern can vary greatly. Each year remains an invitation to radical change and experiment.

This year the first assignment consisted of a 1500-word précis of Milton's *Areopagitica* and a 500-word editorial against free speech. As has been indicated, it is the function of this assignment to act as a preliminary warm-up and to provide a common model of non-legal exposition to which reference can be made throughout the year. It is important to remind the student that he comes to law already trained in the basic techniques he will use, and that reading, writing, and analyzing in law are not utterly different from the reading, writing, and analyzing he has already done.

The second assignment consisted of a 2500-word memorandum on eighteen of the search-and-seizure cases decided by the United States Supreme Court from the *Boyd* case in 1886 to the *Harris* case in 1947.[8] The cases were given to the student complete, and he had no research responsibilities whatsoever in connection with the memorandum. The student was given no introductory briefing on the search-and-seizure problem; hence all of his information on it came from analyzing the case materials themselves. One complete rewriting of the memorandum was called for. To assist in the rewriting, a detailed questionnaire was prepared which forced the student to reexamine the materials and refine his analysis. The function of this assignment as a whole was to initiate the student in the exposition of legal materials, with the Milton précis offering a somewhat comforting analogy throughout. It was also, of course, an intensive exercise in the adequate briefing of cases. It appears that this skill can be developed far more successfully by having the student take cases in a definite series than by having him perfect individual briefs. The operative variables become a good deal clearer when the case can be read in the context of similar cases. The assignment was deliberately made hard; it is doubtful that the student will meet a more complex and technical series of cases in law school. Finally, there was a useful substantive tie-in between the Milton defense of free speech and the civil-liberty issues of the search-and-seizure cases.

The third assignment involved a case problem. The student was given a detailed statement of facts but no indication of the field or fields that were relevant to his case. The analogy to his search-and-seizure memorandum was made explicit; this time, however, the facts of his case controlled relevancy, this time more than one kind of legal issue was involved, and this time he had not only to prepare an exposition of the legal materials—he first had to find them. In past years we had selected the case problems from a variety of fields, relying on the type of case that might appeal to a case-note editor. This year all problems came from the field of defamation. This made possible a reasonably complete coverage of all aspects of defamation in terms of the problems themselves, and made possible, after the individual work was finished, the holding of seminars at which the members of the group, each of whom had worked on a different problem, pooled their knowl-

[8] Boyd v. United States, 116 U.S. 616, 6 Sup.Ct. 524, 29 L.Ed. 746 (1886); Harris v. United States, 331 U.S. 145, 67 Sup.Ct. 1098, 91 L.Ed. 1013 (1947). *Cf.* the table of twenty-six decisions appended to the *Harris* case at 331 U.S. 175–181, 67 Sup.Ct. 1121–1128. In 1946, the ten Supreme Court cases on federal estate taxation of joint estates were used.

edge of defamation. As a result, defamation was omitted from the Torts course for the year.

For this assignment twelve case problems were manufactured by the staff, each problem involving several points. Care was taken to make the problems as realistic as possible,[9] and to keep them touching on those aspects of defamation which are of contemporary significance. Thus they involved such factual contexts as picketing, consumer-research publication, town-hall radio debates, misquotation of the speech of a public figure, shareholders' meetings, group defamation, sexy publicity for an actress, congressional investigating committees, a vindictive will, a satiric book review, and the dismal army record of a sports celebrity. Needless to say, the staff was called upon to exhibit a wide variety of talents and experience in fabricating the problems. A 3000-word memorandum was called for, with research in each case limited to four named jurisdictions. One complete rewriting of the memorandum was required. Once again the problems were deliberately made complex, difficult, and not easy to exhaust.

The fourth assignment represented the culmination of research activities for the year. It turned on a topic problem and resembled the law-review comment or note as contrasted with the case note. It also resembled to some extent what might be called a junior thesis. The assignment has been designed to give the student experience with relatively sustained research and to give him more responsibility for creatively shaping and defining his topic. It also gives him a first chance to do some work with social-science data on a legal problem.

The racial restrictive covenant, which supplied fodder for our researchers in the prior two years, has been in some ways the model problem for this stage of the program.[10] It offers an interesting vertical slice of law, with issues ranging from technical property doctrine through public policy to constitutional law. And, of course, it affords rich opportunity for use of data on the housing of minority groups and on the psychology of race relations. It is not, therefore, without a twinge of regret that we welcome the Supreme Court's definitive decision on the problem.[11]

This year a determined effort was made to give the students some choice in selecting their topics. A list of twenty-five topics was compiled, and each one was orally briefed for the class. After a few days each student selected one of the topics and then spent another few days on a preliminary survey leading to a more determinate statement of the research area. It is worth noting that the class has responded with enthusiasm and a sense of responsibility to this procedure.

In selecting topics emphasis again was on matters of contemporary interest. Such subjects as the TVA, the conscientious objector, the domestic-jurisdiction clause in the UN charter, the Palestine and Trieste disputes,

9 In working up the problems we made the familiar, but always surprising, discovery that problems taken directly from reported cases tended, among other things, to sound too improbable.

10 In 1945 the topic was a comparison of the various lines of legal attack on the covenants. In 1946 the topic was a study of several kinds of contracts contrary to public policy, oriented around the public-policy attack on the covenants.

11 Shelley v. Kraemer, 68 Sup.Ct. 836 (1948).

obscenity, birth control, the legal status of the Communist Party, insanity apart from criminal law, military law, certain federal criminal statutes, government corporations, and the legal significances of the Kinsey report were used. It should be recorded that not every one elected the Kinsey report.

One other topic deserves special mention. The Superior Court in Chicago has recently heard a libel suit brought by various defendants in the sedition trials against *The Sentinel,* a Jewish magazine, for calling them traitors. A jury returned a verdict of $25,000 and the case is now on appeal. Several students visited the trial, which was in progress during the work on the defamation problems, and then did further work on defamation in conjunction with the case itself. Access to the record was obtained and the assignment has offered an interesting chance to experiment with research on a "live" case.

A 5000-word memorandum was called for on the topic. To avoid the tedium of rewriting so lengthy a manuscript, a 750-word condensation rather than a complete rewrite was also required. At about the mid-point of their research, the students submitted a 1500-word editorial covering the basic issues in their topic. The editorial provided a useful intermediate writing assignment without necessitating two complete drafts of the ultimate memorandum.

The fifth and final assignment simply required that the students read one book selected from a list and write a 2500-word review of it. The purpose of the assignment was to vary the writing diet once more and to give the students a chance to look back over their first year of legal education and to tie the book in with it in some way. It has also been, I suppose, a minor precaution against their losing altogether the habit of reading books while in law school.

It might be noted that it has not been difficult to give the various assignments a more or less connected substantive theme. This year there has been a continuous thread of civil liberties running through the materials. A student who topped off his work on the *Areopagitica,* search and seizure, and the defamation limitations on free speech with a topic such as the status of the Communist Party in the United States and a review of, say, the report of the Hutchins Commission on *A Free and Responsible Press* or the report of the President's Committee on Civil Rights would thus have been learning varied things about one basic theme during his year.

III

So much for content. It should be repeated that it is an attractive feature of such sequences that they are fluid and not bound by tradition. The program has been described in detail only to suggest some of the things that can be tried.

A brief report on the procedure and the degree of supervision should be added. There is very little formal class work. There are not more than five hours of general class meetings throughout the year, and these are devoted to description and discussion of the next assignment.

In addition, there are perhaps eight to ten hours of seminar or group sessions. The most unusual sessions of this sort are those at the start of the

case problem and again at the start of the topic problem. The students are asked to discuss the new material without prior preparation or study, and the discussion is thus a sort of state-of-nature experiment. It is a possibly disturbing commentary that a group of, say, fifteen beginning law students will do a pretty fair job of unearthing the good questions presented by a statement of facts they are seeing for the first time.

The other group sessions are devoted (1) to putting together as a whole the substantive field of law explored in the individual problems, and (2) to the use of the library. This year three hours were spent in seminars on defamation at the conclusion of the work on the case problem, and two hours were spent on the library at the beginning of the work on the case problem. The seminars on defamation were not as successful as we had hoped, probably because, relying too much on the background the students had picked up in research on their individual assignments, we had some trouble in establishing a common subject of discourse. But the idea seems definitely worth further experiment.

Experience with teaching library technique has proved especially interesting. There is no discussion of the library until the students are about to be asked to use it intensively; on our time-table, this is after five to six weeks of school. The students are then assigned their case problems and initiated into the library during the same week. The class is divided into groups of approximately twenty students for one intensive library tutorial session. The session has two purposes: (1) to indicate that the apparently technical library tools are basically indices, and to explain these briefly; and (2) to encourage the student to tackle the library on his own by indicating how self-explanatory the books are. The student is reminded that knowledge of library tools, if it is useful, is habitual, and that this is one chance for him rationally and deliberately to form a new habit. Finally, he is told that for the first four months any question about the library is a good question, but that thereafter knowledge will be presumed. At the end of four months he is given a detailed questionnaire against which to check himself. In discussions of his work questions are asked about library techniques from time to time, but no further direct attention is paid to legal bibliography. Knowledge of the library thus comes simply as a by-product of the research; it cannot, we think, be taught profitably by direct attack.

The basic supervisory techniques in the program are the individual interview and written criticism. Each student is assigned to a staff member who is his principal faculty contact with the course, and each staff member carries approximately twenty-five students throughout the year. Partly from necessity, we have discovered that far fewer interviews are required than might at first be thought. During a full year we use only eight to ten compulsory interviews—that is, interviews specifically scheduled for the student. The student is free to drop in on his own volition at any other time, and, of course, there are many voluntary interviews. The number, however, varies greatly according to the anxiety and interest of the individual student; on the average it is doubtful that the student consults with his staff member more than fifteen times during the year. Interviews run forty minutes to an hour.

The contacts with the student are spaced with regard to what might be called the career of a given problem. Thus, on the case problem this year, there was the preliminary group discussion to get the student in a question-asking mood and to emphasize how critical the start of a problem is. Then there was an interview after the student had done about two weeks of research and before he was ready to write. This is partly an insurance matter, but is intended chiefly to emphasize the importance of pausing in the middle of work to check consciously on where one has been and where one is going. Finally, after the first draft of the memorandum had been submitted there was another interview at which the memorandum was returned and the criticisms of it were discussed. The student then proceeded to rewrite the memorandum and it was again returned to him with detailed criticism but without further personal discussion.

Similarly, the topic problem called for four interviews after a preliminary group-discussion session. The first was devoted to reducing the topic to a definitive research area after about ten days of browsing; the second came after about three weeks' research on the problem; the third was held as the research was virtually completed and the student was getting set to write; and the last was for the purpose of discussing criticisms of the final memorandum. It has also been customary each year to have one interview devoted entirely to matters of writing style.

It is true that group criticism discussions would appear to offer advantages of economy. In practice, however, they prove of doubtful value. A criticism appropriate to a large number of students tends to become generalized and diffuse. More important, no student ever regards any general criticism as applying to *his* work. Consequently, although there is considerable repetition of some points in the interviews, the individual interview does appear to be the most effective way of communicating criticism to the student.

There are no tricks involved in the interviewing process. Interviewing appears to be a skill which a wide variety of temperaments acquire with surprising readiness, and it is important that each man run his interviews according to a pattern congenial to him. It is also important that the student be given a chance to do a substantial amount of the talking and that the interviews be kept informal. Finally, it is important that the staff member space his interview load so as to avoid communicating any sense of fatigue to his end-of-the-day interviews. It is the judgment of all who have engaged in it that the interviewing process is fun and probably the most interesting and pleasant work in the course.

The other major supervisory device is the written criticism. Each item of the student's work is returned to him with detailed written criticism. This is an extraordinarily difficult job, and experience with it makes us grateful that we are not required to return examination papers with comparable criticism. There is no easy formula for writing the criticism nor for avoiding captiousness or diffuseness. The job calls for careful and honest reading and for a serious attempt to articulate the precise difficulties with *this* paper. Needless to say, it is here that the drudgery of the work enters, and the fact should not be blinked. But it is also true that this is an excellent way of

sharpening one's critical sensitivity. The integrity of the program and its educative potential depend on the quality of the written criticism.[12]

There remains the question of how well informed about the particular research problem the staff must be. In a sense the answer is that he should be as well informed as time will permit, since effective and penetrating criticism is certainly a function of information. In practice the problem has been solved on a sliding scale requiring more intensive preparation on the earlier assignments. The Milton and search-and-seizure materials were analyzed jointly by the staff in great detail. The defamation problems were the joint product of considerable research; once the problem cases were formulated, a staff memorandum was prepared on each one. On the topics the staff tended to have less technical background and functioned rather as an intelligent audience for the student. It has been interesting to note the students' reaction here. On the earlier assignments they expected and wanted the staff to know more about the problem than they did. But on the topic they were inclined to feel freer and more truly engaged in research, because they knew there was no memorandum already completed and tucked away which they were slowly and painfully trying to duplicate.

In the discussion thus far certain rather prosaic conclusions have been suggested which it might be well to collect and summarize more explicitly. First, such techniques as writing and the use of the library are best taught not directly but as by-products of interesting work. One clear danger in any methods course is that the objective—technique training—becomes so apparent as to reduce assignments to pure exercise or ritual. Second, the course must be an integrated part of the curriculum, given credit commensurate with the time it actually uses, and if possible required of all students. Otherwise it is likely to be regarded as an orphan of the curriculum and as remedial for the backward students. Third, the course must be systematically and uniformly organized so that all students taking it progress through it at about the same pace. Fourth, criticism of the student's work must be detailed and on an individual basis. Fifth, the work should be kept somewhat over the student's head and he should be required to work at it more intensively and carefully than the practice of law itself would often permit. Sixth, the problems selected should have some intrinsic importance in their own right. Not every problem is a good one for the purpose. Seventh, it is probable that fewer and more substantial projects are more productive than a series of smaller ones. Eighth, the course is probably most useful in the first year despite the student's obvious lack of background. Ninth, the course takes substantial time, energy, and effort, and must be adequately staffed.

IV

It is appropriate at this juncture to review the program in terms of what we have come to regard as its basic objectives. This may be more conveniently done if we turn first, for purposes of comparison and distinction, to some of the things we are not primarily seeking to do.

[12] Although the student is given a final grade at the end of the year, he is not given a grade on each assignment. A summary grade tends to operate as a substitute for more explicit and detailed criticism of the work, and any de-emphasis of grades seems desirable on psychological grounds.

The program is not a course in English composition as such. Our principal concern is not with the literary style of our students, although we should, of course, like them to write better. Style and minimal literacy are not the same thing. In a sense, improvement of style is both too difficult and too small an objective. It is too difficult because it is too late in the life of the student for him to develop a good distinctive style if he does not already have one. Style is an elusive matter at best, and seems largely to result from a special sensitivity and daring with respect to language and from a background of wide reading. Our direct approach to style has therefore been chiefly the negative effort to tone down the frustrated poets who are always getting into the law.

But style is also too small an objective. Style, apart from content, has a perilous existence. A great number of apparent stylistic defects are the result of inadequate analysis, inadequate information, and inadequate interest. It is significant that college English courses are becoming increasingly content-conscious. The dilettante prose essay appears to be on its way out.[13] It is our hunch that style, like proficiency in library techniques, comes best as a by-product. Give a man a live problem, push him hard on his analysis, give him an interested reader, and his literacy will begin to take care of itself.

Nor is the program simply a variant of moot court. We have moot court in our second year, and there are obvious affinities between the two programs. The point here is that advocacy should not enter until the student has first learned to make a decent non-partisan summation of a problem.[14] We believe the law-review note is a more fundamental form of legal exposition than the brief.

Again, this is not a course in drafting documents or drafting legislation, although these are both important experiences. It is probably true that in many areas of law a thorough job of drafting an instrument, anticipating future ambiguities, is as good a way as any of testing and summarizing the results of research. However, the administrative difficulties seem to us greater in running a serious program in drafting than in a program of research.[15]

Work in legal aid should also be compared and distinguished. Legal aid work, particularly as elaborated in the Duke program under Professor Bradway,[16] merits a distinct place in legal education. There may be no great difference between doing research for a real client and doing it for an

[13] In fact, the college composition courses at the University of Chicago are relying increasingly on legal cases as materials about which the students write.

[14] This, of course, does not mean that the student is not permitted to display preferences in his memorandum; it means only that he is equally responsible for the adequate presentation of materials hostile to his thesis.

[15] It has, of course, been possible to give some special experience with legislation; and it might well be possible some year to use only problems keyed directly to statutes. In 1946 we used the Contract Settlement Act as a major source of topic problems with some success. As it is, the student frequently gets a chance to try his hand at drafting a remedial statute covering his particular area of research.

[16] Professor Bradway has published various reports on his work. The latest are CLINICAL PREPARATION FOR LAW PRACTICE (1946) and *Education for Law Practice: Law Students Can be Given Clinical Experience*, 34 A.B.A.J. 103 (1948).

imaginary one; common sense would even appear to favor the former enterprise. There are, however, differences in emphasis. Legal aid involves the exercise of many other skills and the performance of other chores by the student; hence research and exposition should play a subordinated role. Like moot court, effective legal aid really presupposes a basic grounding in research and exposition. Only then can the student's energies be turned profitably toward new problems, particularly those centering around the adjustment to the live person with a problem.

Finally, the program is not a tutorial system in the ordinary sense of the term. The staff member does not mediate between the students and the faculty. He is not responsible in any way for the student's work in his other courses, nor for his personal life. He is, of course, in a strategic position to get to know the student, to become his friend, and to discuss with him the general problems of studying law. That, however, is as far as it has been possible or desirable to ask that the staff member's personal supervisory function extend.

So much, then, for comparisons and distinctions. We turn now to a review proper of the basic objectives of the program. The objectives are several, and vary in importance and in the degree to which we have thus far attained them. In many respects they are, of course, complementary to the objectives of the curriculum as a whole. A ready summation of the program is that it is designed to lay a foundation for subsequent individualizing of the curriculum, whether by the seminar, the course paper, the law review, or by further experiment.

There is, first of all, training in techniques. At the first level this means familiarity with the legal research tools through repeated use, and repeated opportunity for exposition of legal materials to a critical reader. But inseparable from these is the opportunity for intensive exercise in analysis—an objective, certainly, of all law courses. Here, however, the special stress is on recognition of the intimate relationship between research, analysis, and exposition. Effective work in law requires skill in all these, and perhaps equally. Today it is also recognized that training in techniques should give the student two other experiences which the modern lawyer increasingly needs; there is accordingly some preliminary wrestling with the application of social-science data to concrete law situations, and some contact with the problem of popularizing technical law.

But techniques include more elusive matters as well. The student must be given some feeling for two prime concerns in exposition in law: how much originality is possible; how much specificity is necessary.

It is not easy to give the student a sense of the degree of originality and creativeness that law work permits. Law is not poetry, and work that is too creative is likely to be bad and dangerous law work. On the other hand, the degree to which legal analysis, research, and exposition can be legitimately individualized is too often ignored. Perhaps the chief impression one has after reading hundreds of student papers is that, to a marked degree, the good paper is good precisely because it adds something to the routine and accurate reporting of authoritative materials. The paper can be made the student's own in many and subtle ways—the style, the proportioning of various aspects of the discussion, the over-all organization, the clarity of transi-

tion, the intelligent use of footnote, the wit, the sensitivity to inconsistency. There is consequently an extraordinary variety among good papers even though they are on precisely the same topic. Finally, it is, I think, the failure of the intellect thus to shine through, if I may be permitted a fancy phrase, that makes so much professional text-book and encyclopedia writing on law so deadly to read. And, I might add, so much the less useful.

Nor is it easy to convey to the student how to balance the concrete and the general in discussing law. In terms of student reaction, this is inevitably the problem of the "philosophers" and the "ferrets," and most students incline toward one type or the other. Here is perhaps the most difficult and persistent challenge: how to give the one student sufficient respect for the authoritative, technical detail of the law, which must inevitably be the core of legal discussion, and how to lead the other student to sufficient recognition of his responsibility to evaluate the detail he so assiduously reports.

The experience of simply living through an extended piece of research can in itself afford important insights and training. It is thus that the student begins to learn to use time like a lawyer, and to appreciate the enormous importance to the lawyer of time and of economy in its use. He may also gain a sense of the normal career of extended work, which has an emotional as well as intellectual pattern, and a sense of the depth to which one can advance in a problem. Consequently, we do require more time on a given problem than under the pressures of practice the student is likely to have a chance to spend. The point, however, is that the way to learn to do a good ten-hour or fifty-hour job of research is first to be experienced in the 100- or 150-hour job.

It may be noted parenthetically that it is perhaps through the time factor that the program offers the student in many ways the best chance of making an early determination of whether he really has an appetite for law and wishes to go on with a legal career. True, there is a great deal more to a career in law than research and exposition; but it is likely that there will be enough of these in any law career to make it prudent for the man who has no taste, patience, or capacity for them to go elsewhere.

In a variety of ways the program can also be used to complement the curriculum and to correct to some degree certain distortions of emphasis that seem inevitable in formal classroom work in law.

The law course necessarily is taught around the high spots in the field, and these are the points of greatest tension and ambiguity. Work on a problem which has some simple, settled issues as well as some doubtful ones gives the student a chance to see the law as, perhaps, it is—an amalgam of certainty and uncertainty—and corrects the anxiety produced by the inference that it is utterly and hopelessly uncertain everywhere.

Then there is the tendency of a national law school to underemphasize the degree to which the law of a particular jurisdiction limits and controls a given case. This may be pointed out repeatedly to the student in class, but he nevertheless tends to think unconsciously and habitually in terms of the distribution of precedent throughout the country.

A similar point can be made about the primacy of the statute. This, again, is frequently made explicit in class, but the day-to-day conduct of

classes is still on a common-law basis, and the student needs the concrete experience of becoming "statute conscious."

Again, by devising problems in which some facts are deliberately left ambiguous or omitted we early encourage the student to question the completeness of his facts and to recognize the artificiality of most of his law school study in this respect.

More important, perhaps, is the opportunity to correct to some degree for the necessary artificiality of subject-matter classifications in law. This is an old, old story about law study, and there has undoubtedly been improvement in grouping course materials along more functional lines; but it remains useful to give the student an early chance to observe how readily the best of categories merge and how effortlessly a case cuts across classifications.

In much the same way, a chief objective of the program is orientation. This is a prime reason for the insistence on the first year. We do not, I think, normally realize how much like a survey course the traditional law course is, especially to the student who has not yet quite caught on. One of the important correctives for the man who gets one or two steps behind the class as it moves from problem to problem is to give him a chance to stop and take a long look at a single problem. He may thus by a different route get the essential insights into the way law works and the way law is taught.

We come to two final objectives, each a fundamental one. The first is to take the chill off the impersonality of the big school and to vary the tedium of the formal class. Here there is a series of allied considerations which the psychologist and the sociologist tell us with increasing emphasis are important to the educational process. It is possible through such a program to give the student at least one point of frequent and private contact with the faculty; it is possible to give the less aggressive student, who seeks and gets so little chance to participate actively, a substantial chance to talk. In the same way, it is possible to satisfy the student's desire for something other than group study in formal class sessions with assignments on a daily, itemized basis. Tied to this is the importance of using something apart from the examination to measure student competence. A law school examination, after all, tests skills under emergency circumstances which are perhaps never repeated in life outside school.

Second, and coordinate with all the above objectives of supplementing various aspects of the student's education, there is the function of the program as a teacher-training experiment for the staff. It is a further peculiarity of legal education that there rarely is an intermediate stage between being a student and being a teacher with full-scale responsibilities. We can report with considerable confidence that the program has real value in terms of teacher training.[17] It gives the staff a year to live in the faculty atmosphere, to adjust to the responsibilities of teaching. It gives them a chance to observe their own personalities under the pressure of student challenge. It gives them an initiation into the conduct of class discussions, and a sense of the combination of routine, boredom, fascination, and freedom that goes along with teaching.

[17] It will be noted that of the former staff members listed in note 4, *supra*, five are now in teaching.

V

At least a small place should be reserved in the discussion for the basic difficulties inherent in any such program. Many of these are, I think, apparent from what has gone before, and they are not insubstantial.

There is the problem of not permitting the work to degenerate into pure exercise and ritual, which it will always threaten to do. There is the great difficulty of keeping criticism responsive to the individual work before one. There is the constant tight-rope walking, prevalent in all teaching but at its most acute here, which is involved in the effort to avoid either over-controlling or under-controlling the student's work. We all know the perennial law-review complaint that the rewrite editor in fact writes the work in the end. Undoubtedly he frequently does, and he can be partly justified on grounds of the exigencies of publishing. But it is not under any circumstances the function of the staff member to write the student's paper. Yet to swing too far the other way is to abdicate the responsibility of detailed and helpful criticism.

There is the curse of any extended research, that it follows inexorably the law of diminishing returns. After the student has put fifty good hours on a project, even though he has not fully and clearly written it up, is it really worth while to ask him to take another twenty or thirty hours to complete the job? It is precisely here that the content course has a basic advantage that cannot be gainsaid. We have attempted to meet the difficulty by various devices: varying the pattern of the written exposition of the given problem; utilizing the seminar to pool knowledge of a larger area of law; selecting, as well as we can, problems interesting in themselves; giving the student some freedom in selecting his own topic. But there remains a constant tension against the diseconomy of extended research.

Finally, there is the challenge: are we not trying to teach something that practice itself will teach later and better? In broad form this is a challenge to all legal education, but, again, it is one that is most acute here. And it is in this connection that we note especially the congruence between the liberal-education emphasis of, say, Chancellor Hutchins and the clinical emphasis of, say, Judge Frank. This is something practice will teach, but it is also something close to the core of the liberal arts, in the classic sense. The answer, so far as there is one, is simply that the school, relieved of the pressures and accidents of practice, can teach more seriously, more honestly, more economically, and above all more comprehensively and coherently. Does any formal education do more than accelerate education? And is not that the necessary reason for its existence?

VI

What light, then, does a large-scale experiment with individual research in law throw on the broader issues of legal education?

To begin with, our experience seems to confirm the suspicion that there is considerable appetite in the law student of today for greater freedom in his education, for more chance to work in a sustained fashion on his own, for a more adult technique of education.

But this is probably something we already knew. More significant, I think, is the indication that the administrative requirements for large-scale individual work are not as prohibitive as might be thought. Great economy can be effected by standardization and organization.

The program thus tends to confirm the practicality of exploring more seriously those various aspects of clinical law training which Judge Frank has so repeatedly urged.[18] Initially this might mean more attention to moot court, legal aid, instrument drafting, supervised visiting of courts; a bit later it might mean more use of the live case and more adventuresome approximations to the attractions of practice. Whether or not one agrees with Judge Frank as to how much clinical training is desirable, one can rather quickly agree that most schools need more of this sort of thing than they now have.

The program also serves to suggest some of the possibilities of the problem method of teaching for which Professor Cavers has been a spokesman.[19] It would be possible to try to teach an entire substantive course by a series of research projects supplemented by lectures. We have had discussions with Professor Sharp as to experimenting with the course in Contracts on this basis; perhaps in the next year or two we will get our courage up to so full-scale an experiment. It would meet squarely the diminishing-returns aspect of research. It would be an important antidote to too much case system. And one need not attempt to decide at this time whether it might ultimately offer a model for teaching all law.[20]

The program might also offer an easy chance to incorporate into the work some of Professor Llewellyn's sane emphasis on more patient, rigorous training in case analysis.[21] It is undoubtedly true, as Professor Llewellyn warns, that much of modern casebook teaching no longer preserves the classic advantages of the case system. There are a variety of ways of correcting for this, but one possibility would be to expand radically the second step in the program—the precedent-analysis assignment—and to add to it several hours of intensive class discussion of closely spaced cases.

Finally, a word about law and the social sciences. Our experience here is necessarily limited, but it does indicate that a necessary and fruitful supplement to other devices for integration is to give the student a concrete research assignment which invites work in both areas. It is somewhat late in the day to talk of the possibility of integration. Increasingly it is the social sciences, including the law, which are the seamless web. And it no

18 The latest is Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).

19 Cavers, *In Advocacy of the Problem Method*, 43 COL.L.REV. 449 (1943).

20 I am indebted to Professor Sharp for calling attention to the fact that increasing individualization in education is not proportionately more expensive. Numerous economies become possible as more members of the faculty are relieved of formal class work and as students are more evenly distributed. It was the experience in the Experimental College at Wisconsin, where Professor Sharp had taught, that despite a large-scale tutorial scheme, faculty-student ratio was 1 to 18 while the average for twenty-six other schools where formal classes predominated was 1 to 10.5. See ALEXANDER MEIKLEJOHN, THE EXPERIMENTAL COLLEGE 255–267 (1932).

21 See Llewellyn *et al.*, *The Place of Skills in Legal Education*, 45 COL.L.REV. 345 (1945) (Report of Committee on Curriculum, Association of American Law Schools).

longer takes, if it ever did, a student of imaginative genius to see some connections between his law and other things.

It is perhaps appropriate to end, therefore, with a brief report on what is a logical second stage in this work. In a senior course in Industrial Organizations, Professor Levi, assisted by two economists, Professors Ward Bowman and Norman Bursler, has experimented with having each student in a class of a hundred do a careful industry study. The study is primarily economic, not legal, and serves to give the student an introduction to the pattern and structure of an industry. The work has gone well and will be reported in its own right in the near future. It is, I think, a happy harbinger of things to come in legal education.

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